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July 7, 2011

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JUL 7 - 2011

Part of
Public Record

Re: Docket No. 42119
North America Freight Association v. Union Pacific Railroad Company

Dear Ms. Brown:

The purposes of this letter are (1) to transmit the attached First Amended Complaint, (2) to report on the status of negotiations between the parties, and (3) to propose a procedural schedule that has been negotiated by the parties.

Although the Board has on several occasions extended the negotiating period and held the proceeding in abeyance pending the outcome of negotiations, the parties unfortunately have failed to reach a negotiated agreement, despite having met, spoken by telephone, and exchanged emails on numerous occasions. Accordingly, the parties jointly advise the Board that no further negotiations appear warranted.

The parties have also negotiated a procedural schedule which we hereby offer for the Board's consideration:

July 18, 2011	Discovery begins
September 16, 2011	Discovery ends
October 31, 2011	NAFCA Opening Statement Due

December 21, 2011

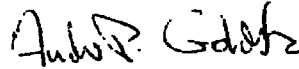
UP Reply Statement Due

January 27, 2012

NAFCA Rebuttal Due

The parties appreciate the Boards forbearance in this matter and now requests that the Board enter an order embracing the procedural schedule set forth above.

Respectfully submitted,



Andrew P. Goldstein
John M. Cutler, Jr.
Attorneys for Complainant

cc: M. Rosenthal
L. Rinn (UP/Omaha)

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42119

NORTH AMERICA FREIGHT CAR ASSOCIATION

v.

UNION PACIFIC RAILROAD COMPANY

FIRST AMENDED FORMAL COMPLAINT ALLEGING
UNREASONABLE PRACTICES AND
VIOLATION OF COMMON CARRIER OBLIGATION

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Attorneys for
North America Freight Car Association

Dated: July 7, 2010

I. IDENTITY OF THE PARTIES

1. North America Freight Car Association (“NAFCA” or “Complainant”) is an unincorporated association comprised of companies that manufacture, lease, rent, own, or operate private freight cars. The shipper members of NAFCA operate private freight cars that move from time to time over the lines of Defendant Union Pacific Railroad Company (“UP”). Freight cars manufactured or leased by other NAFCA members similarly move over UP lines from time to time, as do railroad-owned cars used by shippers who are NAFCA members. Many such movements are subject to the provisions of Item 200-B of UP Freight Tariff 6004 Series (the “Amended Tariff”) and NAFCA members are potentially liable for violations of the Tariff.

2. UP is a common carrier by rail subject to the jurisdiction of the Board.

II. BACKGROUND OF AMENDED COMPLAINT

3. On April 15 2010, NAFCA filed a complaint against the provisions of Item 200-A of UP Freight Tariff 6004 series, the predecessor provision of Item 200-B. Item 200-A provided, *inter alia*, that any party releasing a loaded or empty car to UP was solely responsible for ensuring that the railcar wheels and all safety appliances were clean from any commodity residue and that all valves and discharge ports were properly secured and sealed; that, after having been removed from a loading or unloading facility, or while sitting on UP tracks, if UP personnel discovered that the railcar had any of the above “contamination, leakage, or unsafe conditions,” the car would be returned to the loading or unloading facility and the responsible party could be assessed a \$650.00 surcharge; that the responsible party must indemnify and hold harmless UP from all costs associated with any spill, release, response, mitigation, clean-up and ultimate disposal

resulting from failure to comply with Item 200-A; that a railcar found to violate any of the above contamination or unsafe conditions while in transit over UP's lines will be stopped and transported to the first appropriate and available location for corrective action; that a surcharge of \$650.00 can be imposed against the party responsible for tendering such car to UP; that the assessment of surcharges will not relieve the consignor or consignee of its responsibility for property damage, environmental contamination and clean-up, personal injury or death; and, finally, that acceptance of a railcar in interchange by UP that is later determined to be contaminated or unsafe will no way relieve a customer of the obligations imposed under Item 200-A.

4. NAFCA alleged in its initial complaint that the provisions of Item 200-A imposed unclear standards; unfair responsibilities on a consignor because UP did not undertake to furnish an empty car for loading free of "contaminating conditions" and thereby imposed on the shipper the obligation to render an unclean empty car safe for transportation or, instead, undertake the disruptive process of having the car removed from a train awaiting loading; imposed penalties on consignors and consignees for failing to tender "safe cars" to UP for transportation without any requirement that UP observe the regulations of the Federal Railroad Administration (FRA) directing railroads to conduct a pre-departure inspection of cars for defects including overheated wheels, broken or extensively cracked wheels, and "any other apparent safety hazard likely to cause an accident or causality before the train arrives at its destination"; and required indemnification of UP from "all costs" resulting from the failure of a consignor or consignee to comply with the provisions of Item 200-A. NAFCA alleged that the provisions of Item 200-A constituted one or more unreasonable practices in violation of Section 10702; unreasona-

ble car service rules and practices in violation of Section 11121; that the provisions of Item 200-A violated a carrier's duty to furnish safe and clean cars for transportation, in derogation of Sections 10101 and 11121; and that the indemnification provisions of Item 200-A were an unreasonable practice in violation of section 10702.

5. After UP filed its answer to the initial complaint, the parties sought, and were granted, permission by the Board to engage in negotiations while the proceeding was held in abeyance. The latest of the Board's extension Orders expires on July 9, 2011. The parties have held numerous meetings, discussions and email exchanges in an effort to resolve their differences, but without success. On June 29, 2011, UP issued the amended tariff Item 200-B which is the subject of this amended complaint. Item 200-B does not represent any agreement between the parties and is solely UP's unilateral offering of a revised version of Item 200-A.

III. DESCRIPTION OF ITEM 200-B

6. The complete text of Item 200-B is attached as Appendix A hereto. Although Item 200-B's provisions are arranged and reworded somewhat differently from those of Item 200-A, the Amended Tariff does not otherwise differ materially from Item 200-A except with respect to the elimination of indemnity provisions from Item 200-B. The fundamental problems with Item 200-B are that it attempts to replace otherwise applicable state law of negligence with one-sided obligations that favor UP, and that it ignores UP's obligations under FRA regulations to inspect cars for "unsafe" conditions before a car is first placed in a train. The applicable FRA regulations, 49 C.F.R. Part 215, are attached as appendix B hereto.

7. Item 200-B, paragraph (1), entitled "Tendering Cars Safe for Movement," provides that "the consignor, consignee, or agent releasing a loaded or empty railcar for movement on UP's lines shall remove lading residue from the railcar's, exterior, including the wheels, brakes, and safety appliances ... and ensure that all valves and discharge ports are properly secured" If UP rejects the car as "unsafe for movement," UP may assess the party that released the car a \$650.00 surcharge.

8. Paragraph (2) of Item 200-B, entitled "Setting Out Unsafe Cars at Origin or Destination," provides that if "UP discovers that the railcar is in an unsafe condition for movement due to the failure to remove lading residue or to properly secure ... [valves and discharge ports] after the car was switched from the spot where it was tendered but while still within the facility where it was loaded or unloaded," UP may remove the car from the train and assess a \$650.00 surcharge, plus intraplant switching charges.

9. Paragraph (3) of Item 200-B, entitled "Setting Out Unsafe Cars Enroute," provides that if "UP discovers that the railcar is in an unsafe condition for movement due to the failure to remove residue or to properly secure... after the car was removed from the facility where it was loaded or unloaded, UP will set out the car and notify the consignor, consignee or agent That party will be responsible, at its own costs, for the expenses associated with returning the car to a clean and safe condition.... UP may assess that party a \$650.0 surcharge [plus] applicable switch charges."

10. The final paragraph, (4), provides that payment of any of the surcharges or switching charges assessed under Item 200-B "will not relieve the consignor, consignee, or agent of its responsibility for any property damage, cost associated with environmental contamination and cleanup, personal injury, or death attributable to lading leakage or lad-

ing residue on the exterior of railcars, including wheels, brakes and safety appliances.

UP's acceptance of a railcar that is later determined to be leaking or to have lading residue on its exterior will in no way relieve the consignor, consignee or agent of its obligations herein, and shall not constitute a waiver by UP of the consignor's, consignee's, or agent's obligations to tender railcars suitable for safe movement." (Emphasis supplied).

IV. THE RESULTS OF ITEM 200-B

11. Item 200-B is unlawful and unreasonable for numerous reasons. Initially, it represents an effort by UP to evade its legal responsibilities, and to shift to UP customers significant costs and burdens in connection with the movement of railcars.

12. Railroads have a common carrier duty to furnish clean and safe cars, adequate for their intended use. Failure to do so is a violation of 49 U.S.C. Sections 11101 and 11121.¹ Nothing in the Amended Tariff requires UP to furnish empty cars for loading in safe condition. When a consignor receives an empty car for loading with residue from a prior load of the type condemned by Item 200-B, the consignor must either disrupt and delay its loading operations by rejecting the car to UP or undertake at its own expense the cost of cleaning the car. If UP actually inspected empty cars prior to first placing them in a train for movement to a loading point, as required by the FRA rules, this unreasonable imposition on consignors and the potential penalties should they utilize the "unclean" car for loading, could be avoided.

¹ Although shippers cannot ignore plainly obvious defects in a car, the duty to provide safe and clean cars rests with the carrier. *Liability for Contaminated Covered Hopper Cars*, 10 I.C.C. 2nd 154 (1994). "Adequate service" (as opposed to just "service") is not in the language of Section 11101, but it is part of the general definition of common carrier obligation. *Granite State Concrete v. STB*, 417 F.3rd 85 (1st Cir. 2005).

13. The FRA Rules, including 49 C.F.R. Part 215, Sections 215.11 and 215.13, and Appendix D thereto, require railroads to conduct pre-departure inspections of all cars, loaded or empty, before they depart in a train or are received in interchange. The Amended Tariff does not reflect that duty, which is aimed at safety. The required pre-departure inspection includes several specific tasks and it concludes with the following item of inspection:

(6) any other apparent safety hazard likely to cause an accident or casualty before the train arrives at its destination.

49 C.F.R. Part 215, Appendix D.

14. Throughout the Amended Tariff, residue on car wheels or certain other car parts is characterized as “unsafe.” Having concluded, from the plain language of the Amended Tariff, that residue on the wheels or other car parts is “unsafe,” UP is obliged by subpart (6) of Appendix D to inspect each car prior to departure for that type of “apparent safety hazard.” Instead, the Amended Tariff leaves to whim whether UP will “discover” unsafe residue on car wheels or other specified car parts.

15. The phrasing of the Amended Tariff is an unreasonable and unwarranted effort by UP to evade the usual law of negligence that would apply otherwise. Absent the Amended Tariff, if, for example, a car in a classification yard were to collide with another car, and UP deemed the accident to be due to product residue on the wheels of the first car, UP could (and probably would) bring suit against the consignor of the first car for damages. If the consignor believed that UP was partly at fault for failure to inspect the car prior to departure as required by the FRA rules, that claim could be raised as a complete or partial defense, according to applicable state law. On the other hand, the standards set out in the Amended Tariff purports to limit UP’s obligations to happenstance

“discovery” of unsafe condition and limit the defenses available to a consignor under otherwise applicable civil law by providing UP with the argument that its tariff does not mandate pre-departure inspections. Item 200-B improperly and unreasonably attempts to override safety obligations imposed on UP by the FRA Rules.

16. A similar problem arises under Paragraph (4) of the Amended Tariff with respect to “lading leakage or lading residue on the exterior of rail cars, including wheels, brakes, and safety appliances.” With respect to those circumstances, the Amended Tariff renders consignors liable for lading leakage or lading residue on car exteriors whether or not the car was inspected by UP prior to departure in a train. Again by way of example, if a tank car has a residue of vegetable oil on the side of the car after loading that might later migrate to the wheels and cause a potentially unsafe condition, and UP could have discovered that spillage by a deliberate inspection prior to placing the car in a train, Paragraph (4) of the Amended Tariff appears to relieve UP of the obligation to make any such inspection, yet preserves its right to seek damages from the consignor.

IV. VIOLATIONS OF LAW BY UP

Count 1. 49 U.S.C. § 10702 requires railroads to maintain reasonable practices with respect to the transportation they hold out to perform. Complainant hereby incorporates Paragraphs 1-16 of this Amended Complaint and alleges that the facts and circumstances described therein constitute one or more unreasonable practices by UP in violation of Section 10702.

Count 2. 49 U.S.C. § 11121 requires railroads to furnish safe and adequate car service and to maintain reasonable rules and practices concerning car service. Complainant hereby incorporates Paragraphs 1-16 of this Amended Complaint and alleges that the

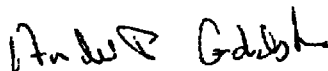
facts and circumstances described therein represent unreasonable car service rules and practices by UP in violation of Section 11121.

Count 3. Railroads have a common carrier duty to furnish safe and clean cars. The Amended Tariff permits UP to accept an empty car from a consignee without inspection and furnish the car to a consignor for loading even if the car has "unsafe" residue. In this respect, the Amended Tariff violates Sections 11101 and 11121.

V. RELIEF REQUESTED

Complainant requests the Board to enter an order requiring UP to cease and desist from publishing Item 200-B of UP Freight Tariff 6004 series, or successor items thereof, containing the unlawful provisions alleged and described above, and to grant such other relief as may be appropriate in the circumstances.

Respectfully submitted,

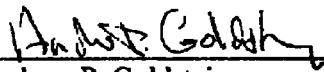


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Attorneys for
North America Freight Car Association

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of July, 2011, served a copy of the foregoing First Amended Formal Complaint Alleging Unreasonable Practices and Violation of Common Carrier Obligation by first class mail, postage prepaid, on counsel for Union Pacific Railroad Company.



Andrew P. Goldstein

S:\mcd\NAFCA First Amended Formal Complaint



UP 6004-C

Item: 200-B
EXTERIOR RAILCAR CONTAMINATION

REMOVAL OF LADING RESIDUE FROM EXTERIOR OF RAILCARS AND PREVENTION OF LEAKING BEFORE TENDERING

- 1. Tendering Cars Safe for Movement:** Consignor, consignee or agent releasing a loaded or empty railcar for movement on UP's lines shall remove lading residue from the railcar's exterior, including the wheels, brakes, and safety appliances (ladders, handholds, brake handles, catwalks, etc.) and ensure that all valves and discharge ports are properly secured and, if necessary, sealed to prevent leakage during rail movement before tendering the car for movement. If UP rejects the car as unsafe for movement, UP may assess the party that released the car a \$650.00 surcharge per car rejected.
- 2. Setting Out Unsafe Cars at Origin or Destination:** If UP discovers that the railcar is in an unsafe condition for movement due to the failure to remove lading residue or to properly secure (and seal, if necessary) after the car was switched from the spot where it was tendered but while still within the facility where it was loaded or unloaded, UP will remove the car from the train and set it out for consignor, consignee or agent to clean, secure or seal, as necessary. UP may assess the party that released the car before it was suitable for movement a \$650.00 surcharge per car set out for cleaning, securing or sealing. UP may also assess applicable intraplant switch charges as published in UP Tariff 6004-series for removing the car from the train and setting it out.
- 3. Setting Out Unsafe Cars Enroute:** If UP discovers that the railcar is in an unsafe condition for movement due to the failure to remove residue or to properly secure (and seal, if necessary) after the car was removed from the facility where it was loaded or unloaded, UP will set out the car and notify the consignor, consignee or agent responsible for releasing or tendering of the car, of the its condition and location. That party will be responsible, at its own cost, for the expenses associated with returning the car to a clean and safe condition, as well as properly disposing of residue or debris resulting from this cleaning, securing or sealing. UP may assess that party a \$650.00 surcharge per car set out for cleaning, securing or sealing. UP may also assess applicable switch charges as published in UP Tariff 6004-series for removing the car from the train and returning the car to a train.
- 4. Assessment and/or payment of the foregoing charges and surcharges will not relieve the consignor, consignee, or agent of its responsibility for any property damage, costs associated with environmental contamination and cleanup, personal injury, or death attributable to lading leakage or lading residue on the exterior of railcars, including wheels, brakes, and safety appliances. UP's acceptance of a railcar that is later determined to be leaking or to have lading residue on its exterior will in no way relieve**

Issued: June 29, 2011
Effective July 1, 2011

UP 6004-C

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Item: 200-B
Continued on next page

the consignor, consignee, or agent of its obligations herein, and shall not constitute a waiver by UP of the consignor's, consignee's or agent's obligations to tender railcars suitable for safe movement.

Issued: June 29, 2011
Effective July 1, 2011

UP 6004-C

Page: 2 of 2
Item: 210-B
Concluded on this page

Federal Railroad Administration, DOT

§215.3

Section	Violation	Willful
(c)(1)-(4) Failure to meet requirements for operating on-track roadway maintenance machine with non-complying headlights, work lights, horn, fire extinguisher, alarm, warning light, or beacon	2,500	5,000
(c)(5) Failure to repair or replace defective or missing operator's seat within required time period	5,000	10,000
214.529 In-service failure of primary braking system	5,000	10,000
214.531 Schedule of repairs; general	2,500	5,000
214.533 Schedule of repairs subject to availability of parts		
(a)-(c) Failure to order necessary part(s), make repair(s), or remove on-track roadway maintenance machine or hi-rail vehicle from service as required	2,500	5,000
(d) Failure to maintain record or make record available to FRA	2,000	4,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

(57 FR 28127, June 24, 1992, as amended at 61 FR 65981, Dec. 18, 1996; 63 FR 11620, Mar. 10, 1998; 66 FR 44412, July 28, 2003; 69 FR 8839, Feb. 26, 2004; 69 FR 30593, May 28, 2004)

PART 215—RAILROAD FREIGHT CAR SAFETY STANDARDS

Subpart D—Stenciling

Subpart A—General

Sec.

- 215.1 Scope of part.
- 215.3 Application.
- 215.5 Definitions.
- 215.7 Prohibited acts.
- 215.9 Movement of defective cars for repair.
- 215.11 Designated inspectors.
- 215.13 Pre-departure inspection.
- 215.15 Periodic inspection.

Subpart B—Freight Car Components

215.101 Scope.

SUSPENSION SYSTEM

- 215.105 Defective wheel.
- 215.105 Defective axle.
- 215.107 Defective plain bearing box: General.
- 215.109 Defective plain bearing box: Journal lubrication system.
- 215.111 Defective plain bearing.
- 215.113 Defective plain bearing wedge.
- 215.115 Defective roller bearing.
- 215.117 Defective roller bearing adapter.
- 215.119 Defective freight car truck.

CAR BODIES

- 215.121 Defective car body.

DRAFT SYSTEM

- 215.123 Defective couplers.
- 215.125 Defective uncoupling device.
- 215.127 Defective draft arrangement.
- 215.129 Defective cushioning device.

Subpart C—Restricted Equipment

- 215.201 Scope.
- 215.203 Restricted cars.

- 215.301 General.
- 215.303 Stenciling of restricted cars.
- 215.305 Stenciling of maintenance-of-way equipment.

APPENDIX A TO PART 215—RAILROAD FREIGHT CAR COMPONENTS

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES

APPENDIX C TO PART 215—FRA FREIGHT CAR STANDARDS DEFECT CODE

APPENDIX D TO PART 215—PRE-DEPARTURE INSPECTION PROCEDURE

AUTHORITY: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

SOURCE: 44 FR 77340, Dec. 31, 1979, unless otherwise noted.

Subpart A—General

§215.1 Scope of part.

This part prescribes minimum Federal safety standards for railroad freight cars.

§215.3 Application.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to each railroad freight car in service on:

(1) Standard gage track of a railroad; or

(2) Any other standard gage track while the car is being operated by, or is otherwise under the control of, a railroad.

(b) Sections 215.15 and 215.303 of this part do not apply to any car:

(1) Owned by a Canadian or Mexican Railroad; and

(2) Having a Canadian or Mexican reporting mark and car number.

(c) This part does not apply to a railroad freight car that is:

(1) Operated solely on track inside an industrial or other non-railroad installation; or

(2) Used exclusively in dedicated service as defined in § 215.5(d) of this part; or

(3) Maintenance-of-way equipment (including self-propelled maintenance-of-way equipment) if that equipment is not used in revenue service and is stenciled in accordance with § 215.305 of this part.

(4) Operated in a passenger train and that is inspected, tested, maintained, and operated pursuant to the requirements contained in part 238 of this chapter.

[44 FR 77340, Dec. 31, 1979, as amended at 55 FR 41305, July 3, 2000]

§ 215.5 Definitions.

As used in this part:

(a) *Break* means a fracture resulting in complete separation into parts;

(b) *Cracked* means fractured without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be "cracked";

(c) *Railroad freight car* means a car designed to carry freight, or railroad personnel, by rail and includes a:

- (1) Box car;
- (2) Refrigerator car;
- (3) Ventilator car;
- (4) Stock car;
- (5) Gondola car;
- (6) Hopper car;
- (7) Flat car;
- (8) Special car;
- (9) Caboose car;
- (10) Tank car; and
- (11) Yard car.

(d) *Dedicated service* means the exclusive assignment of cars to the transportation of freight between specified points under the following conditions:

(1) The cars are operated—

(i) Primarily on track that is inside an industrial or other non-railroad installation; and

(ii) Only occasionally over track of a railroad;

(2) The cars are not operated—

(i) At speeds of more than 15 miles per hour; and

(ii) Over track of a railroad—

(A) For more than 30 miles in one direction; or

(B) On a round trip of more than 60 miles;

(3) The cars are not freely interchanged among railroads;

(4) The words "Dedicated Service" are stenciled, or otherwise displayed, in clearly legible letters on each side of the car body;

(5) The cars have been examined and found safe to operate in dedicated service; and

(6) The railroad must—

(i) Notify the FRA in writing that the cars are to be operated in dedicated service;

(ii) Identify in that notice—

(A) The railroads affected;

(B) The number and type of cars involved;

(C) The commodities being carried; and

(D) The territorial and speed limits within which the cars will be operated; and

(iii) File the notice required by this paragraph not less than 30 days before the cars operate in dedicated service;

(e) *In service* when used in connection with a railroad freight car, means each railroad freight car subject to this part unless the car:

(1) Has a "bad order" or "home shop for repairs" tag or card containing the prescribed information attached to each side of the car and is being handled in accordance with § 215.9 of this part;

(2) Is in a repair shop or on a repair track;

(3) Is on a storage track and is empty; or

(4) Has been delivered in interchange but has not been accepted by the receiving carrier.

(f) *Railroad* means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations

made only for the purpose of effecting repairs. If the car is empty, it may not be placed for loading. If the car is loaded, it may not be placed for unloading unless unloading is consistent with determinations made and restrictions imposed under paragraph (a)(1) of this section and—

(1) The car is consigned for a destination on the line of haul between the point where the car was found defective and the point where repairs are made; or

(2) Unloading is necessary for the safe repair of the car.

(d) Nothing in this section authorizes the movement of a freight car subject to a Special Notice for Repairs unless the movement is made in accordance with the restrictions contained in the Special Notice.

[44 FR 77340, Dec. 31, 1979; 45 FR 26710, Apr. 21, 1980]

§215.11 Designated inspectors.

(a) Each railroad that operates railroad freight cars to which this part applies shall designate persons qualified to inspect railroad freight cars for compliance with this part and to make the determinations required by §215.9 of this part.

(b) Each person designated under this section shall have demonstrated to the railroad a knowledge and ability to inspect railroad freight cars for compliance with the requirements of this part and to make the determinations required by §215.9 of this part.

(c) With respect to designations under this section, each railroad shall maintain written records of:

- (1) Each designation in effect; and
- (2) The basis for each designation.

[45 FR 26710, Apr. 21, 1980]

§215.13 Pre-departure inspection.

(a) At each location where a freight car is placed in a train, the freight car shall be inspected before the train departs. This inspection may be made before or after the car is placed in the train.

(b) At a location where an inspector designated under §215.11 is on duty for the purpose of inspecting freight cars, the inspection required by paragraph (a) of this section shall be made by

that inspector to determine whether the car is in compliance with this part.

(c) At a location where a person designated under §215.11 is not on duty for the purpose of inspecting freight cars, the inspection required by paragraph (a) shall, as a minimum, be made for those conditions set forth in appendix D to this part.

(d) Performance of the inspection prescribed by this section does not relieve a railroad of its liability under §215.7 for failure to comply with any other provision of this part.

[45 FR 26710, Apr. 21, 1980]

§215.15 Periodic inspection.

(a) After June 30, 1980, a railroad may not place or continue in service a freight car that has not received an initial periodic inspection in accordance with 49 CFR 215.25, as in effect on October 6, 1976 (41 FR 44044), unless—

(1) The car is a high utilization car built or reconditioned after December 31, 1977; or

(2) The car is a non-high utilization car built or reconditioned after December 31, 1971.

(b) A freight car that has received an initial periodic inspection under paragraph (a) of this section shall be stenciled to so indicate in accordance with 49 CFR 215.11 and appendix C of this part, as in effect on October 6, 1976 (41 FR 44044). This stenciling need not be retained on the car after June 30, 1981.

(c) As used in this section, "high utilization car" means a car—

(1) Specifically equipped to carry trucks, automobiles, containers, trailers, or removable trailer bodies for the transportation of freight; or

(2) Assigned to a train that operates in a continuous round trip cycle between the same two points.

Subpart B—Freight Car Components

§215.101 Scope.

This subpart contains safety requirements prohibiting a railroad from placing or continuing in service a freight car that has certain defective components.

Pl. 215, App. D

- (1) Any portion missing;
- (2) Broken or cracked as defined in this part.
- (F) Broken side sills, crossbars or body bolster.
- 215.125 Defective couplers.
 - (A) Coupler shank bent.
 - (B) Coupler cracked in highly stressed area of head and shank.
 - (C) Coupler knuckle broken.
 - (D) Coupler knuckle pin or knuckle throw:
 - (1) Missing;
 - (2) Inoperative.
 - (E) Coupler retainer pin lock:
 - (1) Missing;
 - (2) Broken.
 - (F) (1) Coupler locklift is inoperative;
 - (2) No anti-crook protection;
 - (3) Coupler lock is: (i) missing, (ii) inoperative, (iii) bent, (iv) cracked, or (v) broken.
- 215.126 Defective uncoupling device.
 - (A) Fouling on curve.
 - (B) Unintentional uncoupling.
- 215.127 Defective draft arrangement.
 - (A) Draft gear inoperative.
 - (B) Broken yoke.
 - (C) Head of car cushioning unit:
 - (1) Leaking;
 - (2) Inoperative.
 - (D) Vertical coupler pin retainer plate:
 - (1) Missing;
 - (2) Has missing fastener.
 - (E) Draft key or key retainer:
 - (1) Inoperative;
 - (2) Missing.
 - (F) Follower plate missing or broken.
- 215.128 Defective cushioning device unless effectively immobilized.
 - (A) Broken.
 - (B) Inoperative.
 - (C) Missing parts.
- 215.203 Operating a, specified, car, except under conditions approved by FRA.

Standing

- 215.201 Failure to stencil car number and built date on freight car as required.
- 215.202 Failure to stencil restricted car as required.
- 215.203 Failure to stencil maintenance-of-way equipment as required.

APPENDIX D TO PART 215—FRA
DEPARTURE INSPECTION PROCEDURE

At each location where a freight car is placed in a train and a person designated under §215.11 is not on duty for the purpose of inspecting freight cars, the freight car shall, as a minimum, be inspected for the imminently hazardous conditions listed below that are likely to cause an accident or casualty before the train arrives at its destination. These conditions are readily discoverable by a train crew member in the course of a customary inspection.

49 CFR Ch. II (10-1-07 Edition)

- 1. Car body:
 - (a) Leaning or listing to side.
 - (b) Sagging downward.
 - (c) Positioned improperly on track.
 - (d) Object dragging below.
 - (e) Object extending from side.
 - (f) Door insecurely attached.
 - (g) Broken or missing safety appliance.
 - (h) Lading leaking from a placarded hazardous material car.
- 2. Insecure coupling.
- 3. Overheated wheel or journal.
- 4. Broken or extensively cracked wheel.
- 5. Brakes that fail to release.
- 6. Any other apparent safety hazard likely to cause an accident or casualty before the train arrives at its destination.

(49 FR 28711, July 21, 1984)

PART 216—SPECIAL NOTICE AND
EMERGENCY ORDER PROCE-
DURES: RAILROAD TRACK, LO-
COMOTIVE AND EQUIPMENT

Subpart A—General

- 216.1 Application.
- 216.2 Definitions.
- 216.3 Delegation and general provisions.
- 216.7 Penalties.

Subpart B—Special Notice for Repairs

- 216.11 Special notice for repairs—railroad freight car.
- 216.12 Special notice for repairs—locomotive.
- 216.14 Special notice for repairs—passenger equipment.
- 216.15 Special notice for repairs—track claim.
- 216.17 Appeals.

Subpart C—Emergency Order—Track

- 216.21 Notice of track conditions.
- 216.23 Consideration of recommendation.
- 216.25 Issuance and review of emergency order.
- 216.27 Reservation of authority and discretion.

Authority: 49 U.S.C. 20102-20104, 20107, 20111, 20122, 20701-20702, 21201-21202, 21204; 49 U.S.C. 2481, note; and 49 CFR 1.105.

Source: 41 FR 12557, May 6, 1976, unless otherwise noted.

Subpart A—General

- §216.1 Application.
 - (a) This part applies, according to its terms, to each railroad that uses or operates—

- (1) Any portion missing;
- (2) Broken or cracked as defined in this part.
- (F) Broken side sills, crossbars or body bolster.
- 215.123 Defective couplers.
 - (A) Coupler shank bent.
 - (B) Coupler cracked in highly stressed area of head and shank.
 - (C) Coupler knuckle broken.
 - (D) Coupler knuckle pin or knuckle throw:
 - (1) Missing;
 - (2) Inoperative.
 - (E) Coupler retainer pin lock:
 - (1) Missing;
 - (2) Broken.
 - (F)(1) Coupler locklift is inoperative;
 - (2) No anti-creep protection;
 - (3) Coupler lock is (i) missing, (ii) inoperative, (iii) bent, (iv) cracked or (v) broken.
- 215.125 Defective uncoupling device.
 - (A) Fouling on curve.
 - (B) Unintentional uncoupling.
- 215.127 Defective draft arrangement.
 - (A) Draft gear inoperative.
 - (B) Broken yoke.
 - (C) End of car cushioning unit:
 - (1) Leaking;
 - (2) Inoperative.
 - (D) Vertical coupler pin retainer plate:
 - (1) Missing;
 - (2) Has missing fastener.
 - (E) Draft key or key retainer:
 - (1) Inoperative;
 - (2) Missing.
 - (F) Follower plate missing or broken.
- 215.129 Defective cushioning device unless effectively immobilized.
 - (A) Broken.
 - (B) Inoperative.
 - (C) Missing parts.
- 215.203 Operating a restricted car, except under conditions approved by FRA.

Stenciling

- 215.301 Failure to stencil car number and built date on freight car as required.
- 215.303 Failure to stencil restricted car as required.
- 215.305 Failure to stencil maintenance-of-way equipment as required.

APPENDIX D TO PART 215—PRE-DEPARTURE INSPECTION PROCEDURE

At each location where a freight car is placed in a train and a person designated under §215.11 is not on duty for the purpose of inspecting freight cars, the freight car shall, as a minimum, be inspected for the imminently hazardous conditions listed below that are likely to cause an accident or casualty before the train arrives at its destination. These conditions are readily discoverable by a train crew member in the course of a customary inspection.

- 1. Car body:
 - (a) Leaning or listing to side.
 - (b) Sagging downward.
 - (c) Positioned improperly on track.
 - (d) Object dragging below.
 - (e) Object extending from side.
 - (f) Door insecurely attached.
 - (g) Broken or missing safety appliance.
 - (h) Lading leaking from a placarded hazardous material car.
- 2. Insecure coupling.
- 3. Overheated wheel or journal.
- 4. Broken or extensively cracked wheel.
- 5. Brake that fails to release.
- 6. Any other apparent safety hazard likely to cause an accident or casualty before the train arrives at its destination.

[45 FR 28711, Apr. 21, 1980]

PART 216—SPECIAL NOTICE AND EMERGENCY ORDER PROCEDURES: RAILROAD TRACK, LOCOMOTIVE AND EQUIPMENT

Subpart A—General

- Sec.
- 216.1 Application.
- 216.3 Definitions.
- 216.5 Delegation and general provisions.
- 216.7 Penalties.

Subpart B—Special Notice for Repairs

- 216.11 Special notice for repairs—railroad freight car.
- 216.13 Special notice for repairs—locomotive.
- 216.14 Special notice for repairs—passenger equipment.
- 216.15 Special notice for repairs—track class.
- 216.17 Appeals.

Subpart C—Emergency Order—Track

- 216.21 Notice of track conditions.
- 216.23 Consideration of recommendation.
- 216.25 Issuance and review of emergency order.
- 216.27 Reservation of authority and discretion.

AUTHORITY: 49 U.S.C. 20102-20104, 20107, 20111, 20123, 20701-20702, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

SOURCE: 41 FR 18657, May 6, 1976, unless otherwise noted.

Subpart A—General

§216.1 Application.

(a) This part applies, according to its terms, to each railroad that uses or operates—